



IAC-AH-PC-V1

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: AA/11536/2014

THE IMMIGRATION ACTS

**Heard at Centre City Tower, Decision & Reasons Promulgated
Birmingham
On 23rd October 2015**

On 3rd November 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**OA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms A J White (Counsel)

For the Respondent: Mr D Mills (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Jerromes, promulgated on 13th February 2015, following a hearing at Birmingham Sheldon Court on 10th February 2015. In the determination, the judge dismissed the appeal of the Appellant, who subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

2. The Appellant is a male, a citizen of Iraq, who was born on 20th September 1979. He appealed against the decision of the Respondent to refuse his claim for asylum for fear of being persecuted and subjected to ill-treatment. The applicable provisions are paragraph 336 and 339M of HC 395 and paragraph 276ADE of the Immigration Rules.

The Appellant's Claim

3. The Appellant's claim essentially is that he worked for international organisations, including the IRD and IOM, and was an Iraqi national of Sunni Muslim faith. Both his brother and father were in the Ba'ath Party. He received threats by text and by telephone for having worked for these international organisations. He received a threatening letter in July 2013. His brother was then killed in a mistake for him, and his house was attacked by ISIS when they were looking for him. These claims were all rejected by the Secretary of State.

The Judge's Findings

4. The judge accepted that the Appellant was a national of Iraq, a Sunni Muslim, and a former employee of IOM. It was also accepted that one of his brothers had associations with the Ba'ath Party as did his father. The judge accepted that the Appellant received threats by phone (including texts) whilst working for the IOM. She did not accept that he received the letter of 30th July 2013 which stated, "We know your past working with the foreigners and your punishment day will come. We know your location". Neither did the judge accept that the Appellant's brother was murdered on the basis that he was mistaken for the Appellant. She said that there was no evidence of this. Equally, there was no evidence that his home was ransacked. Finally, the judge went on to hold that there would be no risk on return because the country guidance case of **HM and Others** should not be followed when considering return to certain governorates including Salahaddin, "as these are contested areas and meet the circumstances of internal armed conflict" (see paragraph 34.2).
5. The appeal was dismissed.

Grounds of Application

6. The grounds of application state that the judge misinterpreted the evidence, did not give sufficient weight to the police report, and the reason for why he delayed leaving Iraq for some five years, and the reason for resigning from his work with the IOM.
7. On 2nd June 2015, permission to appeal was granted.

The Hearing

8. At the hearing before me on 23rd October 2015, Mr David Mills, appearing as Senior Home Office Presenting Officer, on behalf of the Respondent authority, said at the outset that he would have to accept that the judge

had failed to give proper regard to the “internal flight alternative” or to what is known as “internal relocation”. She had accepted that Salahaddin was a contested area, and once this was done, she had to consider whether the Appellant could reasonably return to Baghdad. It was simply not clear what she meant at paragraph 34.2 when considering the application of **HM and Others**. Mr Mills submitted that in these circumstances the matter would have to go back for a de novo hearing before a First-tier Tribunal Judge. Moreover, before the First-tier Tribunal Judge there was a request to adduce medical evidence, although none was then available, but such evidence is now available and so it should properly be considered by the First-tier Tribunal, because the Appellant is on medication and the availability of the required medical treatment is an issue that should be determined.

9. Finally, my attention was drawn to the recent country guidance case of **AA (Article 15(c)) Iraq CG [2015] UKUT 544**. This makes it quite clear that in assessing whether it would be unreasonable or unduly harsh for a person to relocate to Baghdad, the following factors are likely to be relevant. First, whether the Appellant has a CSID or will be able to obtain one; second, whether the Appellant can speak Arabic (since those who cannot are less likely to find employment); thirdly whether the Appellant has family members or friends in Baghdad able to accommodate him; fourthly whether the Appellant is a lone female (women face greater difficulties than men in finding employment); fifth, whether the Appellant can find a Sponsor to access a hotel room or rent accommodation; sixth whether the Appellant is from a minority community; seventh, whether there is support available for the Appellant bearing in mind that there is some evidence that returned failed asylum seekers are provided with support generally given to IDPs. Mr Mills submitted that this was the only ground, namely, ground 1, which was conceded, ground 2 was not conceded.
10. For her part, Ms White submitted that it was enough for this matter to be categorised as one inviting the finding of an error of law, if Mr Mills accepted that ground 1 was conceded. On that basis, she would have to agree that the proper course of action was for this case to go back to the First-tier Tribunal for there to be a de novo hearing. I heard submissions as to what should be preserved in the determination below.
11. I have no hesitation in saying that insofar as the judge accepts that the Appellant has the profile that he claims to have, being a former employee of IOM, with family association with the Ba’ath Party, and the receiving of threats by phone, all of which are set out at paragraph 33, that these findings should be preserved.
12. As to other matters, Ms White submitted before me that there was evidence, for example in the form of an e-mail, to which reference had been made at the hearing, and which existed in the Respondent’s bundle, but which could not be provided. She submitted that the Appellant, who

was in the court room, was able to access this e-mail himself, and upon doing so, it transpired that there were other e-mails as well.

13. If this is the case, then upon a remittal back to the First-tier Tribunal, this evidence should properly be brought to the attention of the Tribunal.
14. Equally, Ms White drew my attention to the letter by Dr Malik, dated 16th February 2015, from the Leicester City NHS Practice which confirms that the Appellant is registered at the Assist Service. A copy of this letter was handed up to me and I have placed it in the Tribunal file. This should also be adduced and a copy sent to the Respondent authority.
15. The matters raised in relation to paragraph 9 of the skeleton argument by Ms White, refer to “inadequate findings of fact” and these matters can be revisited again before the First-tier Tribunal on the basis of additional evidence.
16. Such evidence has consisted, for example, of the Ministry of Interior, Police Forces Operation Command letter which confirms that the Appellant was threatened by militias, and Ms White raised the question as to why the judge below had referred to this as being “inconclusive”. Again, this is a matter that falls to be considered by the judge on a *de novo* hearing below, with all previous findings in favour of the Appellant preserved in tact for his benefit.
17. I direct that the matter is heard at the first available opportunity at Birmingham Sheldon Court, with the provision of an Iraqi interpreter for the Appellant, and that the matter be listed for two hours.

Notice of Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This matter is remitted back to be determined by a judge other than Judge Jerromes at Birmingham Sheldon Court, with the Appellant to have liberty to adduce any new evidence that appertains to the time of the decision by the Secretary of State. I also direct that not later than seven days before the day listed for hearing of this appeal, each party shall serve on the other and the Tribunal a paginated bundle containing all documents on which the party seeks to rely, including statements from any witness, that the party intends to call, drawn to stand as evidence-in-chief, so as to minimise the need for additional questions.

An anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

2nd November 2015